

121 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gas Transmission Corporation

Docket Nos. RP07-509-000
RP07-509-001
RP07-509-002

ORDER GRANTING WAIVER AND
ACCEPTING TARIFF SHEETS

(Issued October 18, 2007)

1. On June 29, 2007, in Docket No. RP07-509-000, Columbia Gas Transmission Corporation (Columbia Gas) filed revised tariff sheets¹ proposing to revise its *pro forma* Form of Assignment Agreement to be used by replacement shippers when entering into capacity release contracts with Columbia Gas with respect to capacity awarded pursuant to Section 14 of the General Terms and Conditions (GT&C) of Columbia Gas's tariff.² Columbia Gas initially requested that the proposed tariff sheets be made effective August 1, 2007. However, on August 17, 2007, in Docket No. RP07-509-002, Columbia Gas filed a request for waiver of the notice requirement in order to permit the proposed tariff sheets to become effective May 1, 2008.³ For reasons discussed below, the Commission accepts the proposed tariff sheets and finds good cause to grant waiver of the notice requirements to allow the tariff sheets to be effective on May 1, 2008, as requested.

¹ Third Revised Sheet No. 580, Sixth Revised Sheet No. 581 and Second Revised Sheet No. 582, to FERC Gas Tariff, Second Revised Volume No. 1.

² Section 14 of the GT&C of Columbia Gas' tariff is entitled "Release and Assignment of Service Rights" and is found on Sheet Nos. 350-357 of Columbia Gas's FERC Gas Tariff, Second Revised Volume No. 1.

³ On July 18, 2007, in Docket No. RP07-509-001, Columbia Gas filed a request for waiver to permit the tariff sheets to become effective September 1, 2007, which was later superseded by its August 17, 2007 filing.

Details of the Filings

2. Columbia Gas proposes several changes to its *pro forma* Form of Assignment Agreement. Columbia Gas states that these changes are designed to streamline the language for such agreements, to remove certain unnecessary language and to ensure that the Form of Assignment Agreement is uniform across all of the NiSource Gas Transmission and Storage pipelines.⁴ Columbia Gas states that the proposed changes are non-substantive in nature and are designed to facilitate administrative ease for both replacement shippers and Columbia Gas with respect to capacity release transactions under section 14 of the GT&C of its tariff.

3. Columbia Gas states that this filing is timed to coincide with the replacement of its Navigator Internet-based Electronic Bulletin Board (“EBB”) with a new EBB named “Navigates.” In its August 17, 2007 filing, Columbia Gas states that both it and its affiliated pipelines have now scheduled the launch of Navigates for May 1, 2008. Columbia Gas states that its new EBB system will allow Columbia Gas to automate and streamline many of its commercial processes, including contracting, nominations, scheduling, allocations, invoicing and decision support for customers.

4. In its August 17, 2007 filing, Columbia Gas requests a May 1, 2008 effective date for its proposed tariff revisions. Columbia Gas states that it originally requested a June 1, 2007 effective date for tariff filings that coincide with the originally-anticipated June 1, 2007 launch of the Navigates system. It states that the launch date was subsequently moved to August 1, 2007, then to September 1, 2007, and finally to May 1, 2008. Columbia Gas states that the principal reasons for the revised launch date are to provide additional time for customer training and for the integration of customer systems with the new EBB, as well as to ensure a smooth and seamless transition to the new system. Additionally, Columbia Gas states that it decided that the extensive delay to May 1, 2008 was necessary in order to avoid launching the EBB system during the upcoming winter heating season.

Notice, Interventions and Protests

5. Public notices of the instant filings were issued, with interventions and protests due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 385.210 (2007)). Pursuant to Rule 214, all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted (18 C.F.R. § 385.214 (2007)). Granting late intervention at this stage of the proceeding will not

⁴ These include Columbia Gas, Columbia Gulf Transmission Co., Central Kentucky Transmission Co., and Hardy Storage Co., LLC, among others.

disrupt this proceeding or place additional burdens on existing parties. New Jersey Natural Gas Company and NJR Energy Services Company (jointly, NJR), Interstate Gas Supply, Inc. (IGS) and the Indicated Shippers filed protests.⁵ On July 25, 2007, Columbia Gas filed an answer to the protests of NJR, Indicated Shippers and IGS. On August 6, 2007, NiSource Distribution Companies⁶ filed an answer in support of NJR's request for technical conference. On August 8, 2007, Columbia Gas filed a reply in opposition to NiSource Distribution Companies answer.⁷

6. Indicated Shippers, NJR and IGS argue that the instant filing may not appear significant, but when taken together with the other tariff filings to implement the Navigates system there could be a significant impact on how shippers will operate on the system in the future. These parties argue that cumulatively, the effect of the series of tariff revisions proposed by Columbia Gas is to eliminate the flexibility and transparency required by the Commission's policies. Therefore, these parties request that the Commission either reject Columbia Gas' filing or suspend the effectiveness of the tariff sheets pending the outcome of a technical conference which comprehensively evaluates the impact of all of the Navigates-related filings.⁸

⁵ Indicated Shippers joining in this Protest are: BP Energy Company and BP America Production Company, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, A Division of Exxon Mobil Corporation and Hess Corporation.

⁶ NiSource Distribution Companies are: Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

⁷ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept Columbia Gas' July 25 answer because it has provided information that assisted us in our decision-making process. However, we are not persuaded to accept NiSource Distribution Companies August 6, 2007 answer, nor Columbia Gas' August 8, 2007 answer to NiSource Distribution Companies' answer and, therefore, will reject these pleadings.

⁸ The filings referred to by these parties were made by Columbia Gas or its affiliates in Docket Nos. RP07-340, RP07-174, RP07-478, RP07-479, RP07-412, RP07-413, RP07-414, RP07-415, RP07-500, RP07-507 and RP07-508. The Commission has acted on several of these filings. Orders have been issued in the following Columbia Gas' dockets: Docket No. RP07-340-000, Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Further Review, 119 FERC ¶ 61,267 (2007); Docket No. RP07-174-000, Order Accepting and Suspending Tariff Sheets Subject to

(continued)

7. Specifically, NJR complains that Columbia Gas proposes to eliminate current section 9 Special Agreements, from the *pro forma* Form of Assignment Agreement. This section states:

9. Special Agreements. (a) Other agreements between Transporter and Replacement Shipper not inconsistent with Transporter's Tariff, or with the Release Notice underlying this Assignment Agreement, and (b) other terms and conditions specified in the Release which are applicable to this Assignment Agreements, are as follows: _____⁹

NJR asserts that this deletion will limit the flexibility of Columbia Gas' customers to tailor releases to meet their specific needs and that it is not merely a "non-substantive" change, as Columbia Gas suggests. NJR states that this provision is already included in Columbia Gas' tariff and was accepted by the Commission. NJR states that similar flexibility is provided by many other jurisdictional pipelines and that absent a compelling reason by Columbia Gas to make this change, the Commission should reject Columbia Gas' efforts to do so.

8. Indicated Shippers assert that Columbia Gas' proposed revised *pro forma* Assignment Agreement would incorporate the release notice posted on Columbia Gas' EBB¹⁰ and would similarly incorporate the recall rights stated in the release notice. Indicated Shippers assert that the proposed incorporation of the release notice into the *pro forma* Assignment Agreement raises two issues: (1) because Columbia Gas' filings do not adequately describe this proposed change or its potential impact on capacity release services, its tariff proposal violates section 154.204(d) of the Commission's regulations which requires that the impact of the proposed revision to firm and interruptible customers must be explained; and (2) because incorporating terms from release postings into the replacement shipper's contract, particularly recall rights, would affect the substantive rights of both the releasing and replacement shippers, Columbia Gas' proposal is contrary to the requirements of sections 154.1(d) and 154.112(b) of the Commission's regulations that require pipelines to file with the Commission and to list in

Refund and Conditions and Further Review, 119 FERC ¶ 61,268 (2007); Docket No. RP07-412-000, Letter Order dated June 5, 2007, 119 FERC ¶ 61,233 (2007); Docket No. RP07-413-000, Letter Order dated June 5, 2007, 119 FERC ¶ 61,235 (2007); Docket No. RP07-414-000, Letter Order dated June 8, 2007 (unreported); and Docket No. RP07-415-000, Letter Order dated June 8, 2007 (unreported).

⁹ See Sheet No. 580.

¹⁰ See Sheet No. 581 (Section 2(b)).

their tariffs any service agreement that deviates “in any material aspect” from the *pro forma* agreement.

9. Indicated Shippers states that without (1) physically appending the release notice to the Agreement, (2) filing the agreement as non-conforming, and (3) posting the non-conforming provisions on the EBB as special terms, the Agreement would be opaque to the Commission or affected market participants seeking to monitor Columbia Gas’ contracts and creates the potential for undetected negotiated terms and conditions of service. In addition, the Indicated Shippers also assert that, on the NiSource website, only three of the 13 training manuals shippers needed to review for the Navigates system have been posted, therefore, more time is needed for training shippers. For these reasons, Indicated Shippers state the Commission should reject the filing as contrary to the Natural Gas Act (NGA) and the Commission’s regulations or, alternatively, suspend the filing for the maximum statutory period and set it for technical conference.

10. IGS asserts that this filing changes the nature of Columbia Gas’ capacity release service by eliminating the shipper’s choices, such as the frequency with which the Releaser may recall the capacity for all capacity releases, the maximum duration of any such recall, the nomination cycle in which capacity can be recalled, and the Replacement shipper’s re-put option.

11. In its July 25, 2007 answer, Columbia Gas states that the proposed modifications will not result in any changes in a customer’s rights to capacity or capacity release. Columbia Gas asserts that its shippers will retain the exact rights they currently have under the section 14 of the GT&C of Columbia Gas’ tariff and the form of Assignment Agreement.

12. Further, Columbia Gas states that the releasing shipper’s recall rights and any Special Agreements, as well as any other terms and conditions, will be publicly posted on the new Navigates EBB system, pursuant to section 14.1(b) of the GT&C of its tariff. Columbia Gas states that the replacement shipper, and anyone else, will have access to the recall provisions by going to the Awards screen in Navigates, and this information will continue to be posted throughout the term of the capacity release and well beyond its expiration. Columbia Gas states that in view of these facts, the protesting parties claims should be dismissed. However, in its answer, Columbia Gas concedes that it has not completed training for its shippers and, therefore, stated that it pushed back the launch date of Navigates to September 1, 2007, in order to provide adequate time for training. In Columbia Gas’ August 17, 2007 filing in Docket No. RP07-509-002, Columbia Gas states that it has further pushed back the launch date for Navigates and the effective date of the revised tariff sheets proposed herein to May 1, 2008, in order to delay the Navigates launch until after the winter heating season, and to provide customers with more time for training and testing their own systems and electronic data interchange interfaces.

13. Columbia Gas states that Navigates is designed to replace the 15 year old technology of the Navigator EBB system, which runs on outdated hardware and software, and is increasingly difficult to maintain. Columbia Gas states that without implementing the new system, the existing system will ultimately cease to meet critical functional requirements.

Discussion

14. The Commission finds the proposed tariff provisions to be just and reasonable and accepts the filed tariff sheets to become effective May 1, 2008. The Commission finds that Columbia Gas' proposal is adequately supported and that the protesters' concerns regarding the alleged diminution of transparency, flexibility and possible violation of the Commission's regulations are without merit. The changes to Columbia Gas' tariff objected to by the protestors center on Columbia Gas' proposal to remove certain language from its tariff related to Special Agreements and/or its proposal to revise its tariff to incorporate only by reference the recall rights and other terms stated in the release notice. The parties assert that this action would reduce flexibility and transparency of Columbia Gas' tariff and possibly violate the Commission's regulations. However, section 284.13 sets forth reporting requirements for interstate pipelines and specifically requires, at section 284.13(b)(1)(viii),¹¹ that pipelines must report to the Commission all:

[s]pecial terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

15. Therefore, the removal of the Special Agreements section from the Assignment Agreement does not alleviate Columbia Gas from its reporting requirements and such information must be reported pursuant to the above regulation. Accordingly, the Commission can find no merit to the allegations that the instant proposal will reduce the transparency of the transactions.

16. Secondly, the deleted language from the form of Assignment agreement provided for the shipper and pipeline to fill in a blank which would contain any other agreements "not inconsistent" with Transporter's tariff. In addition, currently effective section 14.5(b) of the GT&C of Columbia Gas' tariff states that the "Assignment Agreement shall contain all terms and conditions of the release and assignment; provided

¹¹ 18 C.F.R. § 284.13(b)(1)(viii) (2007).

that such terms and conditions are *identical to those set forth in the underlying Release Notice.*”¹² Therefore, there can be no reduction of transparency or rights under Columbia Gas’ proposed revisions, since there never could be anything placed in the Assignment Agreement that was not already in the Release Notice. Columbia Gas’ revised *pro forma* Assignment Agreement would incorporate the release notice posted on Columbia Gas’ EBB by reference and the terms posted therein. This does not, as the protestors appear to suggest, permit Columbia Gas to incorporate terms that materially deviate from the tariff into its release notice in order to escape formal Commission review of such terms pursuant to sections 154.1(d) and 154.112(b) of the Commission’s regulations. All terms placed in the release notice (and thereby incorporated by reference into the transportation contract) must be consistent with Columbia Gas’ tariff. For example, any recall right provision contained in the release notice must be consistent with the recall right provisions of the Columbia Gas’ tariff. If Columbia Gas and the shipper enter into a transportation contract that materially deviates from the form of service agreement and/or Columbia Gas’ tariff, such contract must be filed with and approved by the Commission before it may become effective.

17. Finally, the Commission finds no merit in the requests for a technical conference by the parties. The parties have raised no substantive issues requiring such action; therefore, the requests for a technical conference are denied.

18. Given the claimed need for training and integration of customer systems in conjunction with the implementation of the new Navigates system, the Commission finds good cause to take action on the proposed tariff revisions well in advance of the expected launch date of Navigates and to waive the notice requirements of the NGA and section 154.207¹³ of its regulations to permit the proposed tariff sheets to take effect May 1, 2008, as requested.

The Commission orders:

(A) The tariff sheets filed in Docket No. RP07-509-000 are accepted to become effective on May 1, 2008, as requested in Docket No. RP07-509-002.

¹² See Fifth Revised Sheet No. 355. Emphasis added.

¹³ 18 C.F.R § 154.207 (2007).

(B) The Commission waives the notice requirements of section 154.207 of its regulations, for good cause shown, to permit the proposed tariff sheets to take effect May 1, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.